IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.263 of 2003

Sankar ... Appellant /
Accused.

-Vs-

The State, rep. By the
Inspector of Police,
Chithamor, Police Station, ... Respondent /
Chengleput District. Complainant

This Criminal Appeal arises out of the Judgment dated 17.12.2002 made in S.C.No.325 of 2001 on the file of Assistant Sessions Judge, Madhuranthakam.

!For Appellant : Mr. S.Govindarajan

^For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor.

:J U D G M E N T

Appellant is the Accused in S.C.No.325 of 2001 on the file of Assistant Sessions Judge, Madhuranthakam. By the Judgment dated 17.12.20 02, the Assistant Sessions Judge, Madhuranthakam has convicted the Appellant / Accused for the offence under S.376 (2) (f) I.P.C. and sentenced him to undergo Rigorous Imprisonment for a period of Ten Years and also imposed fine of Rs.1,000/-; in default to undergo Simple Imprisonment for a further period of one month.

2. P.W.1 - Srimathi is the daughter of P.W.3 - Shanthi and one Devaraj. P.W.2 - Chitra is the Classmate and close friend of P.W.1. Case of prosecution is that P.W.1, aged 10 - 12 Years at the time of occurrence, was studying in VI Standard. On the date of occurrence - 1 4.08.1998 - 5.00 p.m., P.W.1 along with her younger sister - Deepalakshi and P.W.2 went to Thailathope for plucking flowers. At that time, the accused came there and called her to accompany him to the nearby Palm-grove saying that he would give her Palm fruits. Believing the same, P.W.1 went along with the accused. The accused removing his Trouser and Skirt of P.W.1, made P.W.1 to lie down and

the accused laid upon her. When P.W.1 shouted, the accused beat her and had forcible Sexual Intercourse with her. P.W.1 raised alarm. On hearing the alarm of P.W.1, P.W.2 - Chitra, P.W.3 - Mother of P.W.1 and her younger sister came to the scene of occurrence. On seeing them, the accused had run away. P.W.1 narrated the occurrence to her mother - P. W.3.

3. Registration of case and Investigation. P.W.1 - Srimathi along with the Villagers went to Chithamor Police Station and lodged Ex.P.1 - Complaint on 14.08.1998 - 7.00 p.m. On the basis of Ex.P.1 - Complaint, P.W.11 - Sub Inspector of Police had registered the case in Crime No.295 of 1998 under Ss.376 and 511 I.P.C. Clothes of P.W.1 - Srimathi (M.O.1 series) were seized in the presence of P.W.4 - Shanmugam and one Kannan. P.W.1 was sent to Madhuranthakam Government Hospital through P.W.9 - Head Constable for Medical Examination.

4. P.W.6 - Dr.Tahirinussa has examined P.W.1 - Srimathi. She has noted Linear abrasion over the right lebia. P.W.6 issued Ex.P.5 - Wound Certificate. P.W.1 was referred to Chengleput Government Hospital for further investigation. P.W.8 - Dr.Parasakthi, working in Chengleput Medical College Hospital, has examined P.W.1 - Srimathi on 17.08 .1998. On examination, her private parts vulva was normal, Vagina admitted one finger with tenderness; Hymen absent; tears seen at 5 and 7'0 clock position; Surrounding areas found reddish, swelling and tenderness seen. P.W.8 opined that P.W.1 would have been subjected to sexual intercourse. Ex.P.10 is the Certificate of P.W.1 relating to the opinion of P.W.8.

5. P.W.11 - Sub Inspector of Police had taken up the initial investigation. Scene of occurrence was inspected in the presence of Witnesses. On information, on 14.08.1998 - 10.30 p.m., the accused was arrested near Polappakkam Leprosy Hospital. When being interrogated, the accused had given a Confession Statement (Ex.P.3) in the presence of P.W.5 - Rajamani and one Bakthavatchalam. Clothes of accused - M.O.2 series were recovered under Ex.P.4 - Seizure Mahazar in the presence of the same witnesses. The accused was sent to Madhuranthakam Government Hospital for treatment for the injuries sustained by him. On 15.08.1998 - 12.00 midnight, P.W.6 has examined the accused, who reported to her for treatment as to certain injuries stating that he sustained injuries while he was running at Chithamor Cootu Road and by falling down. Noting Contusion and Abrasion on him, P.W.6 issued Ex.P.7 - Wound Certificate.

6. The accused was sent to Chengleput Government Hospital for Medical Examination to know about his potency. P.W.7 - Dr.K.Gururaj has examined the accused on 17.08.1998. Opining that there is nothing to suggest that the accused is impotent, P.W.7 issued Ex.P.8 - Potency Certificate.

7. On the same day P.W.1 - Srimathi was radiologically examined by P.W.7. She was found to be the age of above Ten years and below Twelve years. Ex.P.9 is the Age Certificate relating to P.W.1.
8. Seized Material Objects were sent for Chemical Analysis. Inspector of Police - Ramamoorthy has taken up the further investigation. He

has examined the Medical Witnesses and recorded their statements. On receipt of the Chemical Report and on completion of material part of the investigation, Charge Sheet was filed against the accused under S.376 (2) (f) I.P.C. on 14.05.1999.

9. In the trial Court, to substantiate the Charge against the accused, prosecution has examined P.Ws.1 to 11. Exs.P.1 to P.16 were marked. M.Os.1 and 2 were remanded to Court. The accused was questioned about the incriminating evidence and circumstances under S.313 Crl.P.C. Denying all of them, the accused has stated that he belongs to Madras and that a false case has been foisted against him.

10. In consideration of the evidence adduced by the prosecution, the learned Assistant Sessions Judge found that the evidence of P.W.1 being credible is strengthened by the oral evidence of P.Ws.2 and 3. The learned Judge was of the view that though P.Ws.1 and 2 are young girls, their evidence is found to be credible. Pointing out that the evidence of Victim Girl - P.W.1 is well corroborated by the Medical Evidence of P.Ws.6 and 8, the learned Assistant Sessions Judge held that the prosecution has proved that P.W.1 was subjected to Sexual Intercourse by the accused and that his guilt has been proved. The learned trial Judge was of the view that the delay in receipt of First Information Report in the Court would not in any way affect the prosecution case.

11. Aggrieved over the verdict of conviction and the sentence of imprisonment, the Appellant / Accused has preferred this appeal. Attacking the findings of the trial Court, learned counsel for the Appellant / Accused contended that the trial Court erred in believing the evidence of P.W.1. Laying emphasis upon the delayed receipt of First Information Report in the Court, the learned counsel for the Appellant / Accused has submitted that such delayed receipt throws serious doubts on the prosecution case. It is further contended that nondetection of Semen in the Clothes of the Victim Girl - P.W.1 raises serious doubts on the prosecution case. Drawing the attention of the Court to the evidence of P.W.3 - Mother of P.W.1, where she has admitted that there had been Blood Stain on the Clothes of P.W.1, it is urged that non-detection of Blood Stain or Semen during Chemical Analysis seriously undermines the prosecution case. The main contention urged is that the trial Court erred in acting on the evidence of P.Ws.1 and 2 who are susceptible for tutoring and that due to the family dispute, a false case has been foisted against the accused, which defence was not properly appreciated by the trial Court.

12. Submitting that the evidence of P.W.1 is trustworthy which is amply strengthened by the Medical Evidence, Mr.V.M.R.Rajendran, learned Additional Public Prosecutor has contended that the trial Court has rightly accepted the version of P.W.1 which is strengthened by the version of P.Ws.2 and 3. Drawing the attention of the Court to the evidence of P.W.2, who has seen the accused taking away P.W.1, he has further submitted that P.Ws.1 and 2, aged about 10-12 years have no reason to falsely implicate the accused. Drawing the attention of the Court to Ex.P.10 - Certificate of Examination for Sexual Offence relating to P.W.1 as per which Rupture of Hymen

was noted proving that P.W.1 was subjected to forcible Sexual Intercourse, learned Additional Public Prosecutor submitted that the conviction of the trial Court is well balanced and that there is no reason warranting interference.

13. Upon consideration of the submissions by both sides, evidence and materials on record and the Judgment of the trial Court, the point arises for consideration is:- Whether the Appellant / Accused is proved to have committed Rape on the Victim Girl - P.W.1 and whether the conviction of the Appellant / Accused under S.376 (2)(f) I.P.C. warrants any interference ?

14. P.W.1 - Srimathi, aged 10-12 Years at the time of occurrence, was studying in VI Standard. On the date of occurrence - 14.08.1998 - 5.00 p.m., P.W.1 along with her younger sister Deepalakshmi and P. W.2 - Chitra went to Thailathope for plucking flowers. At that time, the accused told her that he would cut Palm Fruits and he had taken her to the nearby Palm-grove. Believing his words, when P.W.1 followed him, the accused removed his Trousers and made P.W.1 to lie down and the accused laid upon her. When P.W.1 shouted, the accused beat her and had Sexual Intercourse. P.W.1 cried raising the alarm " fhg; ghj;J';f fhg;ghj;J';f ". In the meantime, P.W.3 (Shanthi) - mother of P.W.1, P.W.2 - Chitra and younger sister of P.W.1 - Deepalakshmi came in search of P.W.1. On hearing the alarm raised by P.W.1, they rushed to the place. On seeing them, the accused had run away. P.W.1 has narrated about the act of the accused to her mother - P.W.3. P.W.1 has clearly narrated the occurrence in the Court. Evidence of an young girl like P.W.1 is to be tested for its credibility and reliability.

15. In the trial Court, before giving evidence, P.W.1 has been examined as to whether she is of understanding and know of things. The learned Assistant Sessions Judge, who had the opportunity of seeing and observing her, found her to be of clear understanding and accepted her version as credible. No substantial grounds are made out to take a different view.

16. At the time of occurrence - 14.08.1998 - 5.00 p.m., P.W.2 - Chitra went along with P.W.1 - Srimathi for plucking flowers. P.W.2 has also clearly spoken about the act of the accused in taking P.W.1 to an isolated place - palm-grove and that P.W.2 has informed the same to P.W.3 - mother of P.W.1. Thereafter, P.Ws.2 and 3 went in search of P.W.1, who heard the noise of P.W.1 - Srimathi " fhg;ghj;J';f fhg;ghj;J';f ". On seeing them, the accused had run away. P.W.1 informed them about the Sexual Molestation and the Intercourse committed on her by the accused. P.W.2 - Chitra, who went along with P.W.1 has clearly stated that the accused had taken P.W.1 to an isolated place. P.W.3 - mother of P.W.1 came in search of P.W.1. While narrating the occurrence, P.W.2 has only stated " ... _kjp vd;dplk; te;J r';fh; vd;id bfLj;Jtpl;lhh; vd;W brhd;dJ/ bfLj;Jtpl;lhh; vd;W jhd; brhd;dJ/ ntW vJt[k; brhy;ytpy;iy ... ". Though according to P.W.2, P.W.1 has not narrated the entire occurrence, but has only stated that she had been Sexually Molested by the accused, such statement does not in any way undermine the credibility the P.W.1.

17. Evidence of P.W.3 (Shanthi) - mother of P.W.1 assumes greater significance. Finding that P.W.1 has not returned back to the house, quite probably P.W.3 went in search of P.W.1 and that she was informed by P.W.1 about the act of the accused in committing Rape on her. Evidence of P.W.3 is cogent and corroborating the evidence of P.W.1. This Court finds that the evidence of P.W.1 is well corroborated by the evidence of P.Ws.2 and 3.

18. In her evidence, P.W.3 - mother of P.W.1 has stated that Blood Stain was found in M.O.1 series - clothes of P.W.1 (which were seized under Ex.P.2 - Seizure Mahazar in the presence of P.W.4 - Shanmugam and one Kannan). In his evidence, P.W.4 has stated that he has not seen any Blood Stains on M.O.1 series. M.O.1 series was sent for Chemical Analysis. During Chemical Analysis, no Blood Stain or Semen was detected. The inconsistency in the evidence of P.W.3 and nondetection of Blood Stain or Semen in M.O.1 series is very much relied upon by the Appellant / Accused to assail the prosecution case and the version of P.W.1. This contention has no force. Either P.W.3 might have mistaken the Stains on the Skirt for Blood Stains or the Blood Stains might have been disintegrated during Chemical Analysis. Nondetection of Blood Stains or Semen in the Clothes of P.W.1 would not in any way affect the prosecution case or the credibility of P.W.3.

19. Evidence of P.W.1 - Srimathi is amply corroborated by the Medical Evidence. After registration of the case in Crime No.295 of 1998 , P.W.1 was referred to Chengleput Medical College Hospital for Medical Examination. P.W.7 - Dr.Gururaj, Radiologist has examined her and found her to be of age 10-12 Years (Ex.P.9 - Age Certificate). Keeping the age of P.W.1 in mind, the Medical Evidence of P.W.6 - Dr. Tahirunnisa, attached to Madhuranthakam Hospital is to be considered. P.W.6 has examined P.W.1 on the night of 14.08.1998 - 8.50 p.m. On examination, she has noted " Pain in the Vagina; Linear Abrasion over the right lebia (N.C.) present about 1 cm in length ". P.W.6 has clearly asserted that those injuries could not have been caused either by climbing the tree or by any accidental insertion of a stick into the private parts of P.W.1. The definite opinion evidence of P.W.6 is a strong piece of evidence strengthening the prosecution case.

20. P.W.1 was again sent to Chengleput Medical College Hospital for further investigation, where she was examined by P.W.8 - Dr. Parasakthi, who has issued Ex.P.10 - Certificate of Examination for Sexual Offences. On examination of P.W.1, P.W.8 has noted " Vagina admits one finger with tenderness; Hymen absent; Tears seen at 5 and 7'o clock position; surrounding areas found reddish, swelling and tenderness seen ". Absence of Hymen and Tear seen at Vulva are the strong pieces of evidence that P.W.1 was subjected to Sexual Intercourse. The definite opinion of P.W.8 that " Hymen Absent " and " Vagina Admitted one finger with tenderness" should be not possible by climbing the tree or by accidental insertion of a stick goes along with the definite findings by P.W.6 supporting the prosecution case.

21. The accused was arrested on 14.08.1998 - 10.30 p.m. near Polappakkam Leprosy Hospital. He was brought to Chithamor Police Station at 11.00 p.m. He was interrogated in the presence of P.W.5 - Rajamani and one

Bakthavatchalam and his statement was recorded. Clothes of the accused - M.O.2 series (T.Shirt, Lungi and Trouser) were seized under Ex.P.4 - Seizure Mahazar in the presence of same witnesses. Since the accused was found to have sustained injuries, he was referred to Madhuranthakam Government Hospital for treatment. P.W.6 - Dr. Tahirunnisa has examined the accused at 12.00 midnight on the night of 1 4.08.1998. P.W.6 has noted contusion on the left eye of the accused. In Ex.P.7 - Wound Certificate of the accused, P.W.6 has not noted as to who has brought the accused to the Hospital for treatment. The Column " accompanied by " is left blank. When P.W.6 was questioned about the same, she has stated that there was no requisition from the Police and that the accused had voluntarily appeared before her. Ex.P.7 - Wound Certificate is also silent as to who has brought the accused to the Hospital. Statement of P.W.6 that the accused had voluntarily appeared before her could only be due to mistake. The arrest of the accused and his interrogation in the Police Station before the witnesses is clearly brought out on record. When that being so, the statement of P.W.6 that the accused had voluntarily appeared before her would not in any way undermine the prosecution case.

22. Blood Stained Clothes of P.W.1 - M.O.1 series (Skirt and Shirt) were sent for Chemical Analysis. During Chemical Examination, no Human Blood or no Semen was detected on the clothes of P.W.1. Learned counsel for the Appellant / Accused has seriously attacked the prosecution case on the ground of non-detection of Blood Stain or Semen in M.O.1 series. Absence of Semen or Blood Stain does not throw doubt on the prosecution case; perhaps at the time of committing Rape, there was no ejection of Semen from the accused or blood coming out from the private parts of P.W.1. At this juncture, we may point out the evidence of P.W.7 - Dr.Gururaj. On examination of the accused, P.W.7 has found the accused to be " a Well-built male individual; his Secondary Sexual Characters are well developed; Erection - positive". P.W.7 has further opined that " there is nothing to suggest that the accused is impotent; his Genital organ was found to be normal ". Opinion evidence that the accused was not incapable of performing sexual act is yet another piece of evidence in support of the prosecution case.

23. On the basis of Ex.P.1 - Complaint, case in Crime No.295 of 19 98 of Chithamor Police Station has been registered under Ss.376 and 5 11 I.P.C. at 7.00 p.m. on 14.08.1998. (Printed First Information Report not marked). The First Information Report was received into Court only on 15.08.1998. The distance between the Court and the Police Station is said to be only 10 kms. The First Information Report and Ex.P.1 - Complaint were received in the Court on 15.08.1998. Since the First Information Report is not marked, the time of receipt of Ex. P.1 and First Information Report in the Court is not known. From Ex. P.1, it comes to be known that the First Information Report was registered at 7.00 p.m. on 14.08.1998. After registration of the First Information Report, despatch of the same to the Court is the work of the Investigating Agency. Evidence of P.W.1 cannot be thrown away for such lapses or delayed sending of the First Information Report by the Police Officer. Likewise, the contention urged in the delay in sending the statements of the witnesses, which were received in the Court only on 01.10.1999 has no force. Such delayed receipt of the statements cannot go in advantage of the accused.

24. Faced with the definite evidence of P.W.1 and Medical Evidence, we may consider as to what is the defence. According to the accused, he belongs to Madras and that a false case has been foisted against him due to the family dispute between his family and the family of P.W.1. The defence version that a false case has been foisted against the accused does not impress this court for more than one reason. Medical Evidence definitely shows the sexual violence committed on P. W.1. Further P.W.1 was aged only 10-12 years and a tender girl of young age. If any false complaint is to be lodged against the accused making allegations of Rape being committed on such young girl, her future would be at Stake. She has to face the scoff of the Villagers and the place of her study and other places. In consideration of the tender age of P.W.1, coupled with Medical Evidence, the defence version that a false case has been foisted has no force.

25. The various points urged by the Appellant / Accused were well considered by the trial Court. The learned Assistant Sessions Judge, who had the opportunity of seeing and observing P.W.1 has accepted her evidence which is corroborated by the Medical Evidence as credible. There is no apparent error in the appreciation of evidence by the trial Court. The reasonings for conviction are well balanced based upon the evidence on record and the conviction is to be sustained. Considering the Tender age of P.W.1 and the facts and circumstances of the case, the period of sentence of Rigorous Imprisonment of Ten Years also cannot be said to be unreasonable or harsh.

26. Therefore, the Judgment of the Assistant Sessions Judge, Madhuranthakam in S.C.No.325 of 2001 (dated:17.12.2002) convicting the Appellant / Accused under S.376 (2) (f) I.P.C. and the sentence of Rigorous Imprisonment of Ten Years and the quantum of fine are confirmed and this appeal is dismissed.

Index: Yes

Internet: Yes

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To

1. The Assistant Sessions Judge,
Madhuranthakam.

2. The Principal Sessions Judge,
Chengleput.

3. The Inspector of Police,
Chithamor Police Station,
Chengleput District.

4. The Public Prosecutor,

High Court, Madras.